

Amendments to the Drawings:

The drawings have been amended such as to comply with the Examiner's rejection. Specifically, reference sign 216 mentioned in the description has been added in Figure 2A.

Enclosures:

Replacement Sheets

Annotated Marked-up Drawings

REMARKS

Claims 1-13 are pending in the present application. Claim 1 has been amended to more accurately reflect the claimed invention.

Applicant has carefully studied the outstanding Office Action. The present Response is intended to be fully responsive to all points of rejection raised by the Examiner and is believed to place the application in condition for allowance. Favorable reconsideration and allowance of this application are respectfully requested. No new matter has been added by any of the amendments to the specification. Applicant respectfully requests reconsideration and withdrawal of the Examiner's rejections in view of the foregoing amendments and following remarks.

OBJECTION TO THE DRAWINGS

The Applicant has submitted replacement drawings in compliance with 37 CFR 1.121(d).

CLAIM AMENDMENTS

The Applicant has made two amendments to the claims. First, the Applicant has amended claim 1 to reinsert inadvertently omitted content to address the Examiner's 35 U.S.C. § 112 rejection. Second, the Applicant has amended claim 1 to add the following limitation: "wherein the attaching means and holding means are collinear." The Applicant believes this amendment addresses the Examiner's rejections under 35 U.S.C. § 102(b) and 103.

Furthermore, claims 1, 6, and 11 omit the "unitary" language from the claim. None of the prior art cited by the examiner relates to the omitted language. Dependent claims have been similarly amended where appropriate.

CLAIM REJECTIONS – 35 U.S.C. § 112

In the prior Response to Office Action filed 18 March 2005, the claim listing in the Response inadvertently omitted "a unitary tensioner body, said tensioner body having:" from claim 1. The omitted portion was originally contained within the original application. The claim listing provided within this Response reinstates the inadvertently omitted portion. Considering

the amendment, the Examiner's rejections under 35 U.S.C. § 112 are respectfully traversed. The limitation "said unitary tensioner body" has antecedent basis in claim 1. The applicant respectfully requests the Examiner to withdraw the rejection with respect to claims 3-5.

CLAIM REJECTIONS – 35 U.S.C. § 102

Claims 1, 3-5

The Examiner has rejected claims 1, 3-6, and 8-10 under 35 U.S.C. § 102 as being anticipated by Lock, U.S. Design Pat. 233,312. Specifically, the Examiner says:

Lock teaches a tension [sic] for a surgical tape, the tensioner comprising attaching means; holding means; whereing [sic] the attaching means comprises an elongated slot through the unitary tensioner body; wherein the holding means comprises a circular opening through the unitary tensioner body; and wherein the holing means comprises an elongated slot through the unitary tensioner body.

The Applicant respectfully traverses the Examiner's rejection. Considering the claim as it currently stands, the Lock device does not show either (1) attaching means whereby said tensioner can be attached to a point on a length of surgical tape; and (2) holding means whereby said tensioner can restrainably engage a second point of said surgical tape. The Lock device is designed for "Surgical Tubing or the Like." Anticipation focuses on whether a claim reads on the product or process a prior art reference discloses, not on what the reference broadly teaches. *Kalman v. Kimberly-Clark Co.*, 713 F.2d 760, 218 U.S.P.Q. 781 (Fed. Cir. 1983). In this case, the clip and clamp of the present invention might be considered "attaching means" and "holding means", but the Lock reference does not disclose "attaching means" or "holding means" suitable for use with surgical tape, only surgical tubing. The two materials are vastly different. For this reason alone, the rejection should be withdrawn.

Assuming, *arguendo*, the Lock reference disclosed "attaching means whereby said tensioner can be attached to a point on a length of surgical tape" and "holding means whereby said tensioner can restrainably engage a second point of said surgical tape," the Applicant's amendment overcomes the rejection. The Lock device has two parallel slots, which are unsuitable for use with surgical tape. As shown in Figure 7, the present invention allows the surgical tape to seal off the targeted vessel by pulling the surgical tape taut around the vessel and maintaining the tension on the surgical tape so that the vessel remains closed. If surgical tape

were used with the Lock device, the lack of collinear slots could result in the Lock device twisting and turning. This would result in the device likely causing damage to the vessel. This scenario reinforces the previous argument concerning why Lock is not suitable for use with surgical tape, but also illustrates that reason that attaching means and holding means are placed in a collinear fashion along the longitudinal axis of the present invention. The amendment to claim 1 reflects this change. Considering the aforementioned arguments, the Applicant respectfully requests the withdrawal of the § 102 rejection directed toward claim 1.

Claims 2-5 are dependent on claim 1. The applicant respectfully requests the withdrawal of the § 102 rejections directed toward claims 2-5.

Claims 6,8-10

Claim 6 is an independent claim. The Examiner has failed to distinctly point out how the Lock device anticipates claim 6. Specifically, Lock fails to generally disclose (1) a tensioner for a surgical tape comprising a tensioner body having a first opening and a second opening passing therethrough. Furthermore, Lock fails to disclose (2) “wherein said first opening has a first section having size and shape such that a surgical tape of a given size can frictionally move through said first opening and a second section having a size and shape to restrainably engage the surgical tape of a given size,” or (3) “wherein said second opening has a size and shape to restrainably engage the surgical tape of a given size.”

At no point in the Examiner’s Office Action are the aforementioned limitations discussed or distinctly pointed out. The Applicant respectfully requests withdrawal of the rejection directed toward independent claim 6 and dependent claims 7-10.

Claims 11-13

The Examiner has rejected claims 11-13 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,232,193 (Skakoon). Specifically the Examiner stated:

Skakoon teaches a method of clamping, the method comprising the steps of attaching a

tension, having a unitary body, to a length of surgical tape; passing a portion of the surgical tape around the elongated body structure; and securing the surgical tape in place by inserting a section of the surgical tape into a gripping portion of the tensioner; wherein the attaching step comprises securing a free end of surgical tape in a slot in the tensioner; wherein the securing step comprises threading the length of the surgical tape through an opening in the tensioner.

The Applicant respectfully requests withdrawal of the rejection directed toward claims 11-13. Simply stated, the Skakoon reference does not teach any step involving a length of surgical tape. The Skakoon reference is “a clamp for flexible tubing for an infusion or administrative set” (Abstract). The Skakoon reference does not teach any step involving surgical tape, but the invention relates to “slide clamps for medical and intravenous tubing” (Column 1, lines 10-11). Furthermore, the Skakoon reference states that “Slide clamps are used frequently in hospitals to control fluid flow in compressible medical tubing such as, for example, flexible polyvinyl chloride tubing ...” (Column 1, Lines 14-16, emphasis added). The present invention does not involve a “slide clamp” for controlling fluid flow through or in medical tubing. The present invention involves using the device and surgical tape to prevent the flow of fluid through elongated anatomical structures.

The Skakoon reference fails to disclose (1) attaching a tensioner to a length of surgical tape, (2) passing a portion of said surgical tape, or (3) securing said surgical tape. Every step of the present invention involves surgical tape which the Skakoon reference fails to disclose. The Applicant respectfully requests withdrawal of the rejections directed toward claims 11-13 for the aforementioned reasons. Claims 11-13 should now be in condition for allowance.

CLAIM REJECTIONS – 35 U.S.C. § 103

Claims 2 and 7

The Examiner has rejected claims 2 and 7 under 35 U.S.C. § 103 over the previously discussed Lock reference. Specifically the Examiner stated:

Lock teaches the tensioner of claims 1 and 6. It should be noted that Lock fails to teach wherein the tensioner is formed of plastic. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the tensioner of Lock out of plastic, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416. Also it is common knowledge to those of ordinary skill to choose a material that has sufficient strength for the intended use

[sic] of that material. Furthermore, it is well known in the art of surgical clips/clamps to use plastic as evidenced by US Patents 2889848, 3357674, 3374509, 4434963, 5017192, 5401256. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use plastic to form the tensioner because it is inexpensive and its rigid, long lasting characteristics.

In view of the prior arguments with regard to claims 1 and 6, the Examiner's rejection is now moot. The Examiner's § 103 rejection regarding claims 2 and 7 logically depends on Lock teaching the tensioners of claims 1 and 6. As Lock fails to teach the tensioner as discussed previously, the rejection directed toward claims 2 and 7 should also be withdrawn. The Applicant now believes claims 2 and 7 are in condition for allowance.

CONCLUSION

Applicant has fully responded to the Examiner's rejections. It is respectfully urged that the subject application is patentable over references cited by Examiner and is now in condition for allowance. Applicant requests consideration of the application and allowance of the claims. If there are any outstanding issues that the Examiner feels may be resolved by way of a telephone conference, the Examiner is cordially invited to contact David W. Carstens at (972) 367-2001.

The Commissioner is hereby authorized to charge any additional payments that may be due for additional claims to Deposit Account 50-0392.

Respectfully submitted,

By: 

David W. Carstens
Registration No. 34,134
Attorney for Applicant

Date: Oct. 17, 2005

CARSTENS & CAHOON, LLP
P.O. Box 802334
Dallas, TX 75380
(972) 367-2001 Telephone
(972) 367-2002 Facsimile

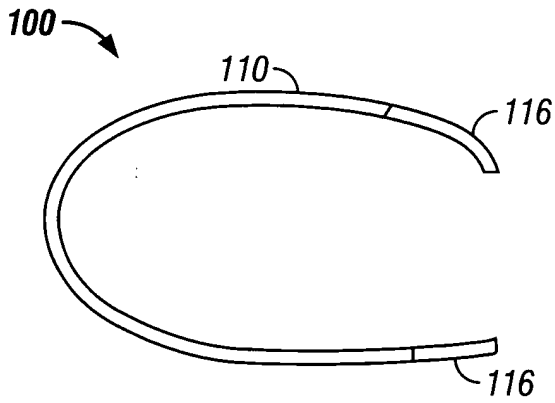


FIG. 1A

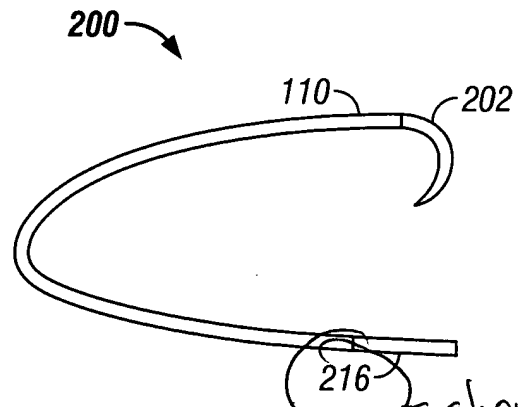


FIG. 2A

changed from
116 to
216

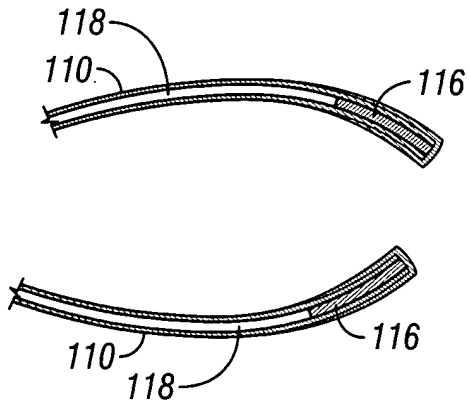


FIG. 1B

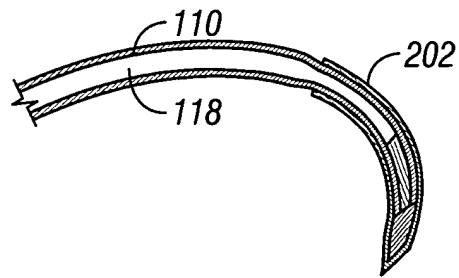


FIG. 2B

2/5

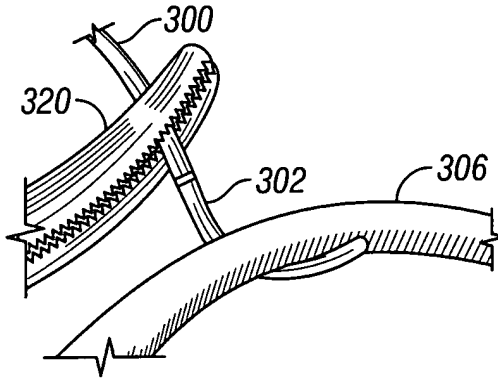


FIG. 3A

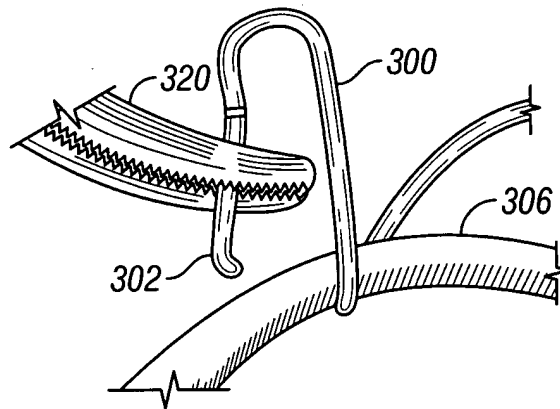


FIG. 3B

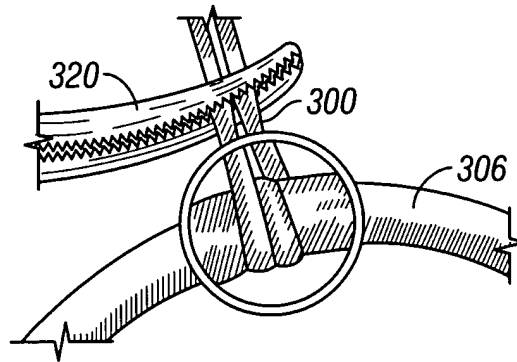


FIG. 3C

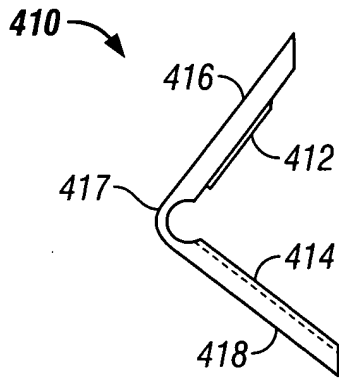


FIG. 4A

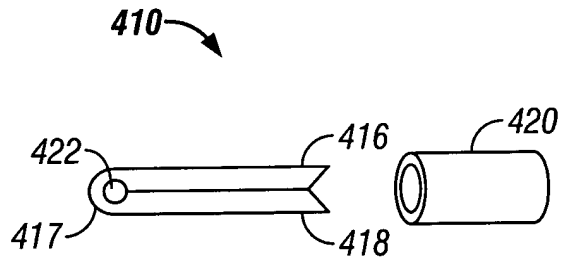


FIG. 4B

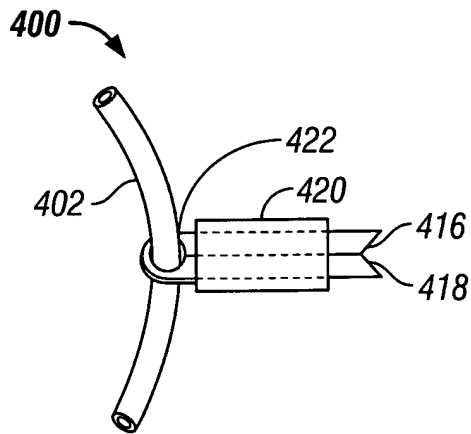


FIG. 4C

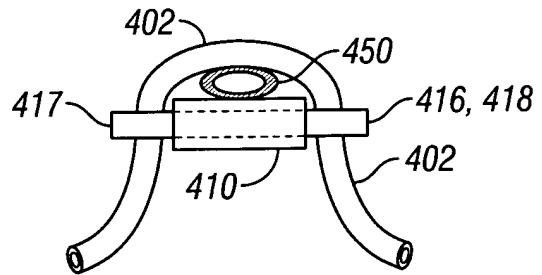


FIG. 4D

4/5

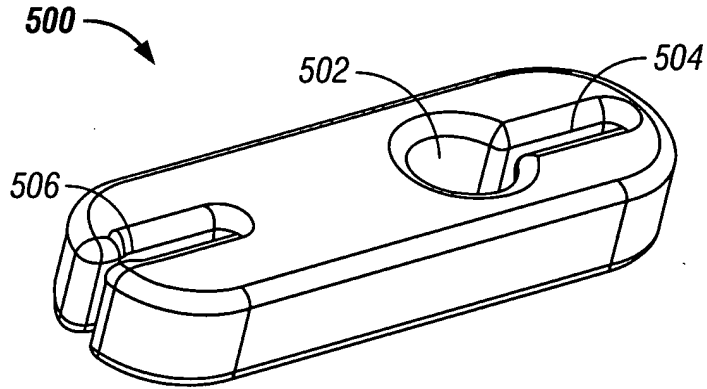


FIG. 5

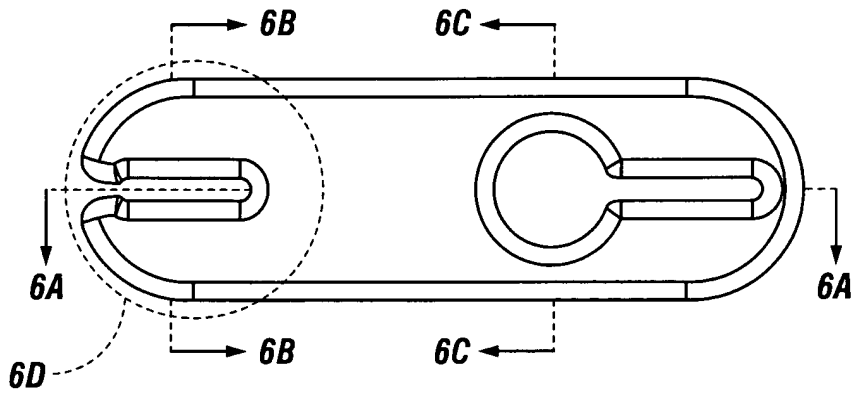


FIG. 6

5/5

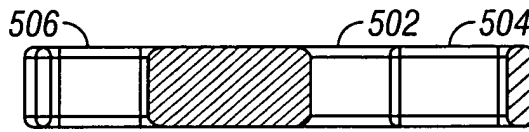


FIG. 6A

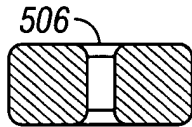


FIG. 6B

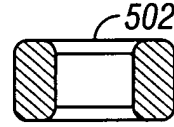


FIG. 6C

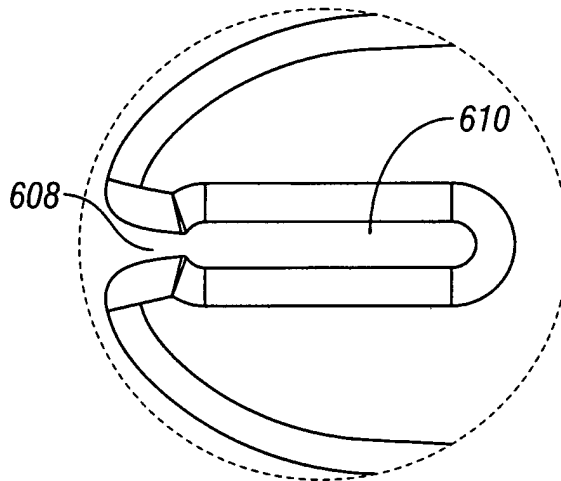


FIG. 6D

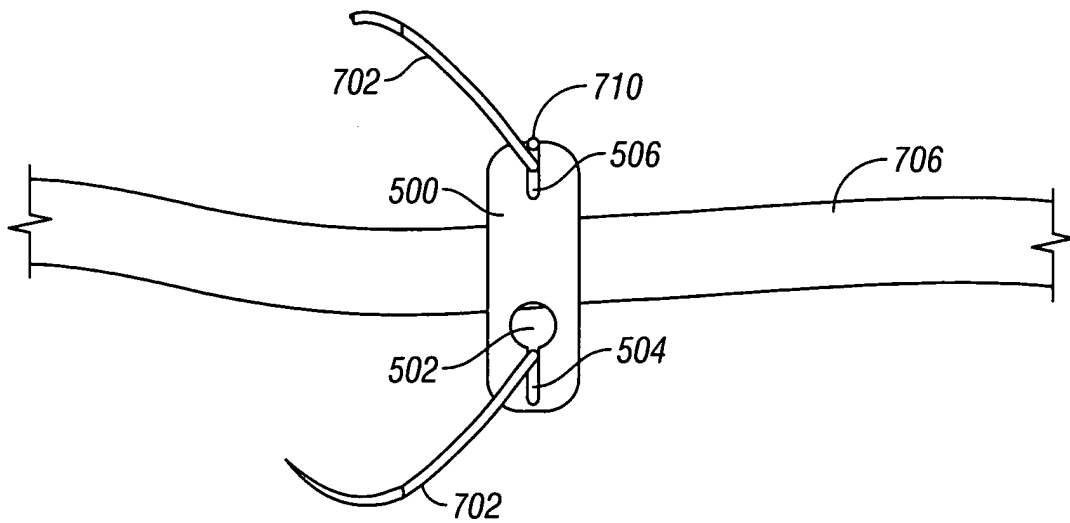


FIG. 7